



September 12, 2002

Mr. Jason Martinson
Open Records Coordinator
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-5108

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168469.

The Texas Parks and Wildlife Department (the "department") received a request for copies of five categories of information pertaining to Inks Lake State Park. You state that you will provide the requestor with copies of all materials that you believe are not excepted from disclosure within a reasonable period of time. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

You claim that Attachment B is excepted from disclosure pursuant to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) provides that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

prosecution[.]” Gov’t Code § 552.108(b)(1). We note that a governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that Attachment B consists of an internal affairs report that has been submitted to the Burnet County District Attorney’s office and which is directly related to a pending criminal prosecution that is being conducted by that office. Based on your representations and our review of Attachment B, we, thus, find that the release of Attachment B would interfere with law enforcement or prosecution. Accordingly, we conclude that the department may withhold Attachment B from disclosure in its entirety pursuant to section 552.108(b)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation, section 552.108 may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor).

You also claim that Attachment C is excepted from disclosure pursuant to section 552.108. You state that Attachment C consists of handwritten notes from a department internal affairs investigator that details an investigation into potential violations of law and policy at Inks Lake State Park and that the particular portion of the investigation which these notes references did not result in conviction or deferred adjudication. We note, however, that section 552.108 only applies to records characterized as records of law enforcement agencies or prosecutors. Thus, section 552.108 applies to the records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce the criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981). It generally does not apply to the records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). You do not inform us, and we are unable to ascertain from our review of Attachment C, whether that information was created by a portion of the department whose primary function is to investigate crimes and enforce criminal laws. Therefore, we are unable to conclude that section 552.108 is applicable to Attachment C. Accordingly, we conclude that the department may not withhold Attachment C from disclosure pursuant to section 552.108 of the Government Code.

However, we note that a portion of Attachment C is subject to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code

§ 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the department must withhold from disclosure the information that we have marked in Attachment C pursuant to section 552.117(1) of the Government Code, if the current or former employees about whom this information relates requested that this information be kept confidential under section 552.024 prior to the department's receipt of the request for information. Otherwise, the department must release this information to the requestor.

In summary, the department may withhold Attachment B from disclosure pursuant to section 552.108(b)(1) of the Government Code. The department must withhold from disclosure the information that we have marked in Attachment C pursuant to section 552.117(1) of the Government Code, if the current or former employees about whom this information relates requested that this information be kept confidential under section 552.024 prior to the department's receipt of the request for information. Otherwise, the department must release this information to the requestor. The department must release the remaining portions of Attachment C to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

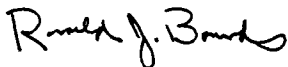
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168469

Enc. Marked documents

cc: Mr. David Thorn
9574 Cantura Crest
San Antonio, Texas 78250
(w/o enclosures)